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Via Courier

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EX PARTE

FILED/ACCEPTED
AUG 31 2007
Federal Communications Commission
Office of the Secretary

August 31, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of Qwest for Forbearance Pursuant to 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services,* WC Docket No. 06-125

Dear Ms. Dortch:

Attached is information responsive to a request for market data contained in a letter dated August 23, 2007 from Thomas J. Navin of the FCC to Melissa Newman of Qwest (the "Information Request"). Qwest is submitting, under separate covers, both a confidential version and a redacted public version (without attachments) of this *ex parte* response. In this submission Qwest is providing current market data for Qwest Corporation broadband enterprise services for which Qwest seeks forbearance in its petition filed on September 13, 2006.[1] As discussed below, Qwest believes that the attached data are irrelevant to the Commission's review of Qwest's pending forbearance petition, given the market for the broadband services covered by the petition. Based on market share data already in the record in this proceeding, grant of Qwest's petition is warranted.

Qwest does not believe that the *ACS Forbearance Order* sets a precedent requiring additional market data. In the *ACS Forbearance Order* the Commission noted that in addition to

[1] In Attachment C Qwest provides the information by state, and also by Metropolitan Statistical Area ("MSA") (or non-MSA areas) within each state. Qwest also provides the data for aggregated services. Please note that in some instances there are small sample sizes when data is broken down to the MSA level. In such instances Qwest believes that the data aggregated to state levels are more reliable. In Attachment B Qwest also provides a methodology document prepared by Harte Hanks which describes the survey methods used to collect the data.

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ACS, GCI and AT&T provided broadband services to enterprise customers in the Anchorage study area and recognized that "the record in this proceeding does not include detailed market share information for particular enterprise broadband services in the Anchorage MSA."[2] The Commission also stated that it did "not find it essential to have such detailed information and would not give significant weight to static market share information in any event."[3] The Commission then looked at "other available data."[4] Specifically, the Commission looked at data submitted by Verizon in the record of the Verizon Broadband Forbearance proceeding.[5] The data showed market shares for providers such as Sprint, MCI and Qwest.[6] There was no evidence that these providers participated in the Anchorage market. Thus, it is not surprising that the Commission recognized that the "marketplace for enterprise broadband telecommunications services in the Anchorage study area is more modest than many other parts of the country as a whole, both in terms of enterprise customers' demands and in terms of the services the competing providers offer to meet those demands."[7]

The Commission's decision to give little weight to static market share information is consistent with its treatment of broadband markets in prior decisions. As AT&T demonstrated in its *ex parte* dated August 28, 2007, the Commission and the courts have consistently applied a national framework in broadband orders over the last five years.[8] Qwest does not repeat AT&T's argument here, but does join AT&T in stating that any departure from the national framework for broadband services in the context of the pending forbearance petitions would be both legally suspect and analytically unwarranted. Qwest is submitting the data only because the Information Request requires Qwest to do so.

In its letter dated August 27, 2007, COMPTEL objects that it will not have adequate opportunity to comment on the issues raised in Qwest's response to the Bureau's request. As

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[2] *In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, 47 U.S.C. § 160(c), for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, Memorandum Opinion and Order, WC Docket No. 06-109, FCC 07-149, rel. Aug. 20, 2007 ¶ 98 ("*ACS Forbearance Order*").

[3] *Id.* ¶ 98; *see also id.* at n.270 ("we do not give significant weight to such static market share information in any event").

[4] *Id.* ¶ 98.

[5] *Id.* ¶ 98 & n.270.

[6] *Id.* n.270.

[7] *Id.* ¶ 100.

[8] *See* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Robert W. Quinn, Jr., AT&T, WC Docket No. 06-125, dated Aug. 28, 2007.

stated above, Qwest does not believe that the Commission needs to rely upon additional market analysis in order to grant forbearance. The Commission should rely upon data similar to that relied upon in granting the *ACS Forbearance Order*. Qwest submitted such data in its forbearance petition. COMPTEL has had more than ample opportunity to respond to that information. Furthermore, COMPTEL and other parties have already argued that the Commission should consider localized data, and deny Qwest's petition on the basis that such data will show anemic competition.[9] They have had more than ample opportunity to submit any data that they believe supports their arguments.

Pursuant to the request of August 23, Qwest provides the attached data, which show robust competition in Qwest's 14-state region. While Qwest requested forbearance for Qwest Communications Corporation products as well as Qwest Corporation products, since the request for additional market data springs out of the *ACS Forbearance Order*, which only considered ACS as an incumbent local exchange carrier ("ILEC"),[10] Qwest provides data only for Qwest Corporation's ILEC services.

Consistent with data already in the record, these data show robust competition throughout Qwest's region. Qwest has **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of ATM installations, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of frame relay installations, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of installations for the LAN Switching Service proxy, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of installations for Metro Ethernet, and **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of installations for OCx or SONET services. Again, given the national market for these services, the figures noted above overstate Qwest's competitive position with respect to these services. As shown in previously-filed data, Qwest has less than a **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** share of the national market for the services covered by Qwest's petition.[11]

The chart below shows the correspondence between the Qwest Corporation broadband enterprise services for which Qwest seeks forbearance, and the Harte Hanks data.

Qwest Corporation Product	Product Description	Corresponding Harte-Hanks Category

[9] *See, e.g.*, Reply Comments of COMPTEL, WC Docket No. 06-147, filed Aug. 31, 2006 at 2-3.

[10] *See ACS Forbearance Order* ¶ 1.

[11] *See* Qwest petition at Attachment B.

Qwest Corporation Product	Product Description	Corresponding Harte-Hanks Category
Frame Relay	Frame Relay Service (FRS), employing digital technology, provides high-speed access connections and throughput to interstate service providers or provides high-speed throughput to intraLATA interstate Local Area Networks (LANs), as well as host access capabilities and interLATA interstate FRS. FRS supports transmission speeds up to DS3.	Frame Relay
ATM	ATM Service is a connection-oriented communications service that uses Asynchronous Transfer Mode (ATM) technology. The service provides customers with high-speed, low-delay information transfer capacity, which supports applications that require near-real-time mixed media (data, video, image, voice) communications among multiple locations. ATM supports transmission speeds of DS1, NxDS1, DS3, OC3, and OC12.	ATM
Metro Optical Ethernet (QMOE)	QMOE Service is a flexible, easy-to-use, data transport service that uses established Ethernet transport technology. QMOE allows customers to connect multiple enterprise locations within a service area using Ethernet protocol.	Metro Ethernet
Local Area Network Switching Service	Local Area Network (LAN) Switching Service (LSS) is a transport service designed to interconnect LSS interfaces between customer-designated premises. LSS provides a specific amount of bandwidth, and supports both point-to-point and multipoint connectivity between customer-designated locations. LSS data is transported over 45Mbps and 155Mbps access facilities using fiber optic facilities or equivalent.	Sites with Host/Remote status and T3 lines serve as a proxy. That is, these sites are part of a company wide area network and a T3 access.
Synchronous Service Transport	Synchronous Service Transport (SST) is a point-to-point private line that is the next logical step in the evolution of voice, data and video transport. SST offers the connectivity and a variety of capacities to accommodate your needs. SST is provisioned on single-mode, fiber-optic cable and employs only the	Sites with SONET or OCx lines serve as proxy because SST is a SONET-based service.

Qwest Corporation Product	Product Description	Corresponding Harte-Hanks Category
	highest-quality, carrier-class equipment. SST utilizes Synchronous Optical Network technology (SONET) for transmission at speeds of OC-3 at 155.52 Mbps, OC-12 at 622.08 Mbps, OC-24 at 1.25 Gbps, OC-48 at 2.49 Gbps and OC-192 at 9.95 Gbps.	
Ethernet Ports over SONET (EPoS) on SST & SHNS	Ethernet Ports over SONET (EPoS) provides Ethernet protocol interface for managed optical transport of data signals of various speeds over Company provided Synchronous Service Transport (SST) as set forth in Section 7.14, and Self-Healing Network Service (SHNS) as set forth in Section 15. EPoS allows for point-to-point transmission on SST and SHNS bandwidths at speeds of 10 Mbps, 100 Mbps or 1 Gbps.	Sites with SONET or OCx lines serve as proxy because Ethernet Ports over SONET is a SONET-based service.
GeoMax	GeoMax is a high-speed, multi-protocol, fiber optic data transport service. It utilizes Dense Wave Division Multiplexing (DWDM) technology to enable two or more optical signals having different wavelengths to be simultaneously transmitted in the same direction over one strand of fiber. DWDM technology is protocol and bit rate independent, thus enabling GeoMax service to support multiple customer native protocols and applications on a single platform. Concatenated Optical Carrier levels are fully supported and include OC3c, OC12c and OC48c.	Sites with SONET or OCx lines serve as proxy because SONET bandwidths are a common interface on these DWDM systems.
Self Healing Network Service (SHNS)	SHNS is a dedicated bi-directional ring facility between multiple customer-specified node locations. SHNS utilizes Synchronous Optical Network technology (SONET) for transmission at speeds of OC-3 at 155.52 Mbps, OC-12 at 622.08 Mbps, OC-48 at 2.49 Gbps and OC-192 at 9.95 Gbps.	Sites with SONET or OCx lines serve as proxy because SHNS is a SONET-based service.

Harte Hanks does not collect data for uses as specific as that in the two products in Qwest Corporation's video transport portfolio, Broadcast Digital Video Transport Service and HDTV

net. With bandwidth options up to 270 Mbps, these products are most analogous to the SONET-based services.

This *ex parte* as well, as the enclosed information, is confidential under the *Protective Order* adopted in this proceeding.[12] Qwest also believes that there is a separate statutory basis for not making its confidential response to the Information Request available for public inspection. *See* 47 C.F.R. §§ 0.457(d), 0.459. As such, appended hereto is Qwest's associated Confidentiality Justification (Attachment A). Qwest's response contains proprietary third-party data regarding Qwest and other telecommunications providers. Such information would not ordinarily be made available to the public, and disclosure may cause substantial competitive harm to Qwest and to other telecommunications providers. Accordingly, the non-redacted information is appropriate for non-disclosure both under Sections 0.457(d) and 0.459, as well as under the *Protective Order*.

Sincerely,

/s/ Melissa Newman

cc: (Confidential and redacted versions)
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[12] *In the Matters of Qwest Petition for Forbearance Under 47 U.S.C. 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, First Protective Order, WC Docket No. 06-125, DA 07-3611, rel Aug. 16, 2007.